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Affirmed Submitted.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 237.

THOMAS F. RYAN AND CHARLES J. KNIGHTON, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

FILED NOVEMBER 9, 1872.

Miller & Wintes
Oct. 2, 1893

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1 Pleas of the circuit court of the United States for the district of Indiana, begun and holden at the United State' court-house, at the city of Indianapolis, in said district, in the year of our Lord one thousand eight hundred and seventy-one, before the Honorable S. H. Treat, judge of the district court of the United States for the southern district of Illinois, and ex-officio judge of said circuit court.

Declaration.

THE UNITED STATES
vs.
THOMAS F. RYAN, CHARLES J. KNIGHTON. } 2336. Debt.

Be it remembered that heretofore, to wit, on the 10th day of November, A. D. 1870, the United States, by Thomas M. Browne, esq., its attorney, filed its declaration herein, in the words and figures following, to wit:

The United States of America, plaintiff, complains of John A. May, Thomas F. Ryan, and Charles J. Knighton, defendants, of a plea that the said defendants render unto said plaintiff the just and full sum of ten thousand dollars, lawful money of the United States, which the defendants owe and unjustly detain from the plaintiff.

2 For that whereas, heretofore, to wit, on the 18th day of July, in the year of our Lord one thousand eight hundred and sixty-eight, the said defendant, John A. May, was, and had for a long time been, a manufacturer of tobacco, to wit, at Indianapolis, in the district aforesaid; and the said John A. May then and there having on hand, of tobaccos manufactured by him, one hundred and ten boxes of plug-tobacco, to wit, eleven thousand and nine hundred and twenty-eight and one-half pounds thereof, which said tobacco was subject to a tax of forty cents on each pound, and which tax was due the United States and was wholly unpaid; and the said John A. May representing to the collector of revenue for the 6th collection district of Indiana that he desired to transport said tobacco in bond, without first having paid the tax due on the same, (said tax at that time amounting to four thousand seven hundred and seventy-one & $\frac{40}{100}$ dollars,) to the thirty-second collection-district in the State of New York, and to the collector of said district, and to then and there store the same in the proper bonded warehouse: Therefore, to secure the plaintiff in the payment of

3 the tax on said tobacco, as aforesaid, and to obtain the benefits of the statutes of the United States in that behalf made and provided, the said John A. May, as principal, and the said Thomas F. Ryan and Charles J. Knighton, as securities, made their certain writing obligatory, sealed with their seals, and now here shown to the court, bearing date a certain day and year therein inserted, to wit, the eighteenth day of July, A. D. 1868, by which said writing-obligatory the defendants acknowledge themselves held and firmly bound to the plaintiff in the full and just sum of ten thousand dollars, to the payment of which the said defendants then and there and thereby bound themselves, jointly and severally, and their joint and several heirs, executors, and administrators, firmly by the writing-obligatory aforesaid.

And the said writing-obligatory is subject to certain conditions thereunder written, to the effect following, that is to say, that if the above-bound John A. May should transport, or cause to be transported, and within twenty days from the date of said writing should complete

the transportation of the following-described merchandise, that *is* to say—

Marks.	Serial number.	No. of packages.	Articles.	No. of pounds.	Rate of tax.	Amount of tax.
Ⓑ		110 boxes.	Plug tobacco.	11,928½.	40c.	$4,771 40.

(one hundred and ten boxes of plug-tobacco, weighing in the aggregate eleven thousand nine hundred and twenty-eight and one-half pounds, upon which tax was due at the rate of forty cents per pound,) from the manufactory owned by the said John A. May, at Indianapolis, direct to the thirty-second district of the State of New York, and should deliver the said tobacco to the collector of said district, and should store or cause the same to be stored in a bonded warehouse, Class "B," in said district, according to law, then the said writing-obligatory was to be void; otherwise to abide and remain in full force and virtue.

And the plaintiff, by Thomas M. Browne, United States attorney for the district of Indiana, gives the court now here to understand and be informed, that the said John A. May did not transport, and did not cause to be transported, at any time after the making of the said writing, the said merchandise, to wit, the said one hundred and ten boxes of plug-tobacco, of the weight aforesaid, nor any part or
5 portion thereof, and did not deliver the same, nor any part thereof, to the collector of thirty-second district of the State of New York, and did not store the same, or cause the same or any part thereof to be stored, in a bonded warehouse, of Class "B," in the said district, according to law, nor did the said John A. May pay, or cause to be paid, to the said plaintiff, the taxes due on the tobacco aforesaid, to wit, the sum of four thousand seven hundred seventy-one & $\frac{40}{100}$ dollars, or any part thereof, but the same still is due and unpaid, and by reason of the statute in such case made and provided the said John A. May became further liable to pay interest on the sum aforesaid at the rate of six per centum per annum from the said 18th day of July, A. D. 1868, all of which sums remain due and unpaid.'

2d. And the said plaintiff, further complaining of the said John A. May, Thomas F. Ryan, and Charles J. Knighton, said defendants, says that heretofore, to wit, on the eighteenth day of July, in the year of our Lord one thousand eight hundred and sixty-eight, the said defendant, said John A. May, being then and there a manufacturer of tobacco, at Indianapolis, at and in the 6th collection-district of the State of
6 Indiana, and he, the said John A. May, representing to the collector of said district that he desired to ship of his manufacture one hundred and ten boxes of plug-tobacco, weighing twelve thousand pounds, to the 32d collection-district in the State of New York, and to have the said tobacco put into a United States bonded warehouse in said district, and in charge of the collector thereof, and the said tobacco was subject to a tax of 40 cents upon each and every pound thereof; and the said John A. May being desirous of transporting the said tobacco to the place aforesaid in bond and without prepayment of the taxes thereon due the United States, in pursuance to the statutes of the United States in that behalf made and provided; and thereupon the said John A. May, as principal, and the said Thomas F. Ryan and

Charles J. Knighton, as sureties, made their certain writing-obligatory, sealed with their seals, and now here to the court shown, bearing date a certain day and year therein inserted, to wit, the 18th day of July, A. D. 1868, by which said writing-obligatory the defendants acknowledged themselves held and firmly bound to the plaintiff in the just and full sum of ten thousand dollars, to the payment of which
7 the said defendants thereby then and there bound themselves jointly and severally, and their joint and several heirs, executors, and administrators, firmly by the writing-obligatory aforesaid.

And the said writing-obligatory is subject to certain conditions thereunder written to the effect following, that is to say, that the above-bound John A. May should transport or cause to be transported, and, within twenty days from the date of said writing, should complete the transportation of the following-described merchandise, to wit: one hundred and ten boxes of plug-tobacco, marked ⟨B⟩, weighing eleven thousand nine hundred twenty-eight and one-half pounds, subject to a tax of forty cents per pound, and an aggregate tax of four thousand seven hundred seventy-one forty-hundredths dollars, from the manufactory owned by the said John A. May, at Indianapolis, directed to the thirty-second district of the State of New York, and should deliver the said tobacco to the collector of said district, and should store or cause the same to be stored in a bonded warehouse, Class "B," in said district, according to law, then the said writing-obligatory was to
8 be void; otherwise to abide and remain in full force and virtue.

And the plaintiff, by Thomas M. Browne, United States attorney for the district of Indiana, gives the court now here to understand and be informed that the said John A. May, contriving to cheat and defraud the United States out of its revenues arising from said tobacco, and to avoid the payment of the taxes due thereon, as aforesaid, did not transport and did not cause to be transported at any time the said tobacco, or any part thereof, and did not deliver the same nor any part thereof to the said collector of the thirty-second district of the State of New York, and did not store the same or cause the same or any part thereof to be stored in a bonded warehouse of Class "B" in the said district, according to law, but, upon the contrary thereof, he, the said John A. May, removed from his said manufactory and sold plug-tobacco equal in amount to the tobacco aforesaid, and subject to a like tax, without having paid to the plaintiff the taxes thereon, and then and there substituted for said tobacco and shipped to said thirty-second district of the State of New York one hundred and ten boxes of ashes, brick-
9 dust, dirt, and tobacco-sweepings, and the said John A. May did not pay or cause to be paid the taxes due on the tobacco aforesaid to the plaintiff, to wit, the said sum of four thousand seven hundred seventy-one dollars and forty cents or any part thereof, but the same is still due and wholly unpaid, and by reason of his failure to pay the same the plaintiff is entitled to recover interest thereon at the rate of six per centum from the said 18th day of July, A. D. 1868.

Whereby and by means of the said several premises, an action accrued to the plaintiff to have and demand of said defendants the said sum of ten thousand dollars above demanded. Yet the said defendants, although often requested so to do, have not nor has either of them as yet paid the said sum of ten thousand dollars or any part thereof to the plaintiff, but to pay the same have hitherto wholly refused and still re-

fuse, to the damage of the plaintiff of ten thousand dollars, and hence this suit is brought and judgment therefor demanded.

THO. M. BROWNE,
U. S. Attorney.

10 And afterwards, to wit, at the November term of said court, on the 10th day of November, A. D. 1870, before the Honorable W. Q. Gresham, judge of said court, the following proceeding, in the cause above entitled were had, to wit:

Appearance of Ryan.

Comes now the defendant Thomas F. Ryan, by Mess. McDonald and McDonald, his attorneys, and enters his appearance herein.

And afterwards, to wit, at the November term aforesaid of said court, on the 14th day of December, A. D. 1870, before the Honorable W. Q. Gresham, judge of said court, the following further proceedings in the cause above entitled were had, to wit:

Alias pro. for May & Knighton.

Comes now Thomas M. Browne, esq., attorneys, prosecuting the pleas of the United States, and suggests of record that the defendants John A. May and Charles Knighton are not found in this district; and thereupon it is ordered by the court that this cause, as to said defendants May and Knighton, be continued, and that alias process do issue.

Rule to plead.

And upon motion of the said attorney for the United States, the defendant Thomas F. Ryan is ruled to plead on or before the 28th day of the present month; and thereupon the defendant craves oyer of said writing-obligatory in the declaration mentioned, which is read
11 to him in the words and figures following, to wit:

Bond on oyer.

Know all men by these presents that we, John A. May, as principal, and Thomas F. Ryan and Charles J. Knighton, as sureties, are held and firmly bound unto the United States of America in the full and just sum of ten thousand dollars, for the payment of which sum we do bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated at Indianapolis this eighteenth day of July, A. D. 1868.

The condition of this obligation is such that if the above-bounden John A. May shall transport or cause to be transported, and within twenty days from the date hereof shall complete the transportation of the following-described merchandize, viz.,

Marks.	Serial numbers.	No. of packages.	Articles.	No. of pounds.	Rate of tax.	Amount of tax.
Ⓡ		110 boxes.....	Plug-tobacco.	11,928½	40c.	$4,771 40

from the manufactory owned by John A. May at Indianapolis directly to the thirty second district of the State of New York, and shall deliver the same to the collector of said district, and store or cause the same to
12 be stored in a bonded warehouse, Class "B," in said district, according to law, then this obligation is to be void; otherwise to abide and remain in full force and virtue.

JOHN A. MAY. [SEAL.]
THOMAS F. RYAN. [SEAL.]
CHARLES J. KNIGHTON. [SEAL.]

Witness:
W. H. MUZZY.
H. K. NASH, JR.

Dem. afterwards withdrawn.—See f. 13.

And afterwards, to wit, at the November term aforesaid of said court, on the 31st day of December, A. D. 1870, before the Honorable W. Q. Gresham, judge of said court, the following further proceedings in the cause above entitled were had, to wit:

Comes now Thomas M. Browne, esq., attorney, prosecuting the pleas of the United States; and the defendant Thomas F. Ryan, by Mess. McDonald and McDonald, his attorneys, also comes and files his demurrer to the declaration herein, in the words and figures following, to wit; and the plaintiff, by its said attorney, says its said declaration is sufficient in law.

And afterwards, to wit, at the May term of said court, on the 6th day of May, A. D. 1871, before the Honorable W. Q. Gresham, judge of said court, the following further proceedings in the cause above entitled were had, to wit:

13 Comes now the defendant Thomas F. Ryan, by Mess. McDonald, Butler and McDonald, his attorneys; and upon his motion the rule heretofore entered against him to plead is extended to Thursday next.

And afterwards, to wit, at the November term of said court, on the 23d day of November, A. D. 1871, before the Honorable Thomas Drummond, judge of said court, the following further proceedings in the cause above entitled were had, to wit:

Comes now Thomas M. Browne, esq., attorney, prosecuting the pleas of the United States; and the defendants, by Mr. McDonald, also come, and withdraw their demurrer heretofore filed herein; and upon motion, leave is granted the plaintiff to file an additional count to its declaration, which is now done, and is in the words and figures following, to wit:

Third count to dec'n.

3d. And the plaintiff, further complaining of the said John A. May, Thomas F. Ryan, and Charles J. Knighton, said defendants, says that heretofore, to wit, on the 18th day of July, in the year of our Lord 1868, the said John A. May was then and there an authorized manufacturer of tobacco at Indianapolis, Indiana, at and in the sixth collection-
14 district of said State; and that the said John A. May then and there represented to the collector of the internal revenues and taxes of the United States that he desired to transport of his (the said May's) own manufacture one hundred and ten boxes of plug-tobacco, manu

factured by him at the city aforesaid, from his said manufactory at Indianapolis, to the 32d collection-district, in the State of New York, without prepayment of taxes due the United States thereon, as he might do by reason of the laws of the United States in that behalf made and provided; and that the said John A. May might be permitted to transport the tobacco aforesaid by the said collector, from Indianapolis to the said 32d collection-district in the State of New York, the said defendants, the said John A. May as principal, and the said Thomas F. Ryan and Charles J. Knighton, as sureties, there and then made their certain writing-obligatory, now here to the court shown, sealed with their seals, and dated the certain day and year therein written, to wit, the 18th day of July, A. D. 1868, by which said writing-obligatory the said defendants acknowledged themselves held and firmly bound unto the said plaintiff in the just and full sum of ten thousand dollars, to
15 the payment of which the said defendants thereof then and there boun' themselves jointly and severally, and their joint and several heirs, executors, and administrators, firmly by the writing-obligatory aforesaid. And the said writing-obligatory is subject to certain conditions thereunder written, to the effect following, that is to say, that if the said John A May should transport, or cause to be transported, and within twenty days from the date of the said writing should complete the transportation of the following described merchandize—

Marks.	Serial numbers.	No. of packages.	Articles.	No of pounds.	Rate of tax.	Amount of tax.
Ⓑ	.....	110 boxes.....	Plug tobacco..	11,928½.....	40 c.....	$4,771 40

that is to say, one hundred and ten boxes of plug-tobacco, weighing eleven thousand nine hundred twenty-eight and one-half pounds, upon which the rate of tax is forty cents each pound, and the total tax due on the said tobacco is four thousand seven hundred and seventy-one dollars and forty cents, from the manufactory owned by the said John A. May, at Indianapolis, directed to the thirty-second district of the State of New York, and should deliver the said tobacco to the collector of said district, and should store or cause the same to be
16 stored in a bonded warehouse, Class "B," in said district, according to law, then the said writing-obligatory was to be void; otherwise to abide and remain in full force and virtue.

And the plaintiff, by Thomas M. Browne, United States attorney for the district of Indiana, gives the court now here to understand and be informed that the said John A. May did not transport, and did not cause to be transported, at any time after making the said writing-obligatory, the said merchandize, to wit, one hundred and ten boxes of plug-tobacco, weighing eleven thousand nine hundred and twenty-eight & one-half pounds, nor any part or portion thereof, or any plug-tobacco, or manufactured tobacco whatever; and he, the said John A. May, did not deliver said tobacco, or any tobacco whatever, to the collector of the 32d district of the State of New York, and did not store the same, or any part thereof, or cause the same, or any part thereof, to be stored in a bonded warehouse of Class "B," in the said collection-district, in the said State of New York; and by reason of the premises the said John

17 A. May became liable to pay the said plaintiff the taxes on 11,928½ pounds of tobacco at the rate of forty cents for each pound, amounting to the sum of four thousand seven hundred and seventy-one dollars and forty cents, which said sum is due, and remaining wholly unpaid; and by means thereof, and by reason of the statute in such case made and provided, he, the said John A. May, became further liable to pay interest on said sum of $4,771.40 at the rate of six per centum per annum from said 18th day of July, A. D. 1868; all of which sums remain due and unpaid. And afterwards, to wit, at the November term aforesaid of said court, on the 15th day of December, A. D. 1871, before the Honorable S. H. Treat, judge of said court, the following further proceedings in the cause above entitled were had, to wit:

Come now the defendants Thomas F. Ryan and Charles J. Knighton, by Mess. McDonald, Butler and McDonald, their attorneys, and file their plea herein in the words and figures following, to wit:

Plea of Ryan & Knighton.

Come now the defendants, Thomas T. Ryan and Charles J. Knighton, and for a plea in this behalf say that the said plaintiff ought not to have and maintain her aforesaid action against them, because,
18 they say, that the conditions of the writing-obligatory in said declaration mentioned were not broken in the manner and form as in said declaration alleged; and of this they put themselves upon the country.

McDONALD, BUTLER AND McDONALD,
Attorneys for Defendants.

And the plaintiff doth the like.

Agreement as to spec. defences.

It is agreed that the defendants by filing the above plea do not waive any objections to the legal sufficiency of any of the breaches assigned on said bond in said declaration, and it is further agreed that any and all special defences may be given in evidence under the above plea.

McDONALD, BUTLER AND McDONALD.
THO. M. BROWNE, *U. S. Att'y.*

Submission.

And thereupon, by agreement of parties, this cause is submitted for hearing and final determination without the intervention of a jury. And the court, having heard the evidence and argument of counsel, now takes the same under advisement.

And thereupon the said attorney for the Government gives the court to understand and be informed that the defendant John A. May is not found in this district.

19 It is therefor' ordered by the court that this cause as to said defendant John A. May be continued, and that alias process do issue as to him.

And afterwards, to wit, at the May term of said court, on the 13th day of May, A. D. 1872, before the honorable S. H. Treat, judge of said court, the following further proceedings in the cause above entitled were had, to wit:

Comes now the United States, by Mr. Browne, its attorney; and the defendants come also by Mr. McDonald, their attorney. And the court, being sufficiently advised in the premises, doth now make the following special finding, to wit:

Special finding.

On the 18th day of July, 1868, and for one year prior thereto, John A. May, one of said defendants, was an authorized manufacturer of tobacco, and was engaged in that business at the city of Indianapolis, in the 6th collection-district of the State of Indiana; that, before that date he had manufactured a large quantity of plug-tobacco at his said manufactory, upon some of which he paid the taxes, and upon some of which, at said date, the taxes were unpaid. On said 18th day of July, and before then, he had returned an amount of plug-
20 tobacco, manufactured by him, to the assessor of said district, equal to 12,000 pounds, upon which no taxes had been paid at the date aforesaid, and upon which the taxes are still unpaid; that, upon the day aforesaid, the said John A. May applied to the assessor and collector of revenue of the said district, in due form of law, for permission to transport in bond, from his manufactory at Indianapolis to a bonded warehouse of Class "B," in the 32d collection-district in the State of New York, one hundred and ten (110) boxes of plug-tobacco, containing, as represented by him, said May, 11,928½ pounds of plug-tobacco; that permission was granted to him to so transport said tobacco by the said officers upon his executing and filing the proper transportation bond; that, in pursuance to this arrangement, the defendants, the said John A. May as principal, and the said Ryan and Knighton as his sureties, executed and delivered the bond in suit.

That, immediately before the making and delivery of said bond, 110 boxes were by said May exhibited to the inspector of tobaccos; that May represented to said inspector that said boxes contained plug-to-
bacco of the quality subject to a tax of forty (40) cents per pound;
21 that the tobacco said May returned to the assessor, and upon which the tax was unpaid on the 18th day of July aforesaid, was of the kind and quality subject to a like tax of forty cents per pound; that these representations were made by May to the inspector; that said inspector did not examine the contents of said boxes, the same being closed and nailed up so as to exclude a view of the contents; that those boxes were duly branded by said inspector as containing plug-tobacco; that, after the execution of the bond aforesaid, and after its delivery to the plaintiff's agent, the said May shipped to the 32d collection-district of New York the identical 110 boxes exhibited as aforesaid to the tobacco-inspector, the same being the boxes branded by him, and the said boxes were delivered in a bonded warehouse, Class "B," in said district; that the collector of said 32d district of New York duly certified to the collector of the 6th collection-district of Indiana aforesaid that the said boxes had been so received, and the usual bond executed therefor by the consignee, and thereupon the collector of the said 6th collection-district of Indiana entered the transportation bond
22 aforesaid cancelled; that the certificate of the collector of the 32d collection-district of New York, and the entry of cancellation by the collector of the 6th district of Indiana, were made without knowing what said boxes contained.

These boxes, after their delivery in the bonded warehouse, Class "B," 32d district of New York, were discovered to contain nothing but ashes

brick-dust, brick-bats, tobacco-remnants, tobacco-stems, and tobacco-sweepings. They contained no tobacco in plug. The material of which the contents of these boxes was in part composed was an article of commerce having a market value in foreign parts, and especially in Australia; and that the said 32d collection-district of New York was one to which shipments in bond for the purpose of shipping to foreign parts, tax-free, were usually made; that on or about the 10th day of September, 1868, the boxes were discovered not to contain plug-tobacco as aforesaid by the collector of the 32d New York district. On the 22d September, 1868, May was arrested at Indianapolis for conspiracy to defraud the United States, and soon thereafter fled the State, and has not returned; that his property was seized for delinquent taxes and sold, and that said May is wholly insolvent.

23 At the time the said John A. May applied for permission to transport said tobacco as aforesaid, he stated to the said collector and assessor of the 6th district of Indiana that it was his purpose to obtain proper clearances for said tobacco at the port of Brooklyn, situate in the 32d collection-district of New York, and to ship the same to some foreign port, tax-free, pursuant to the act of Congress in such case provided. The boxes contained the same material when inspected at Indianapolis and shipped from there, and when the bond was executed, that they did when they were examined at the said 32d collection-district; that no change in contents occurred in transit or after arrival at the bonded warehouse.

The sureties had no knowledge of the contents of the said boxes at any time before their arrival and inspection in the bonded warehouse aforesaid; they executed the bond in good faith; said John A. May shipped no other boxes or tobacco in pursuance of the terms of said bond, except the one hundred and ten boxes aforesaid; and that he in no otherwise complied with the condition of said bond, except as aforesaid.

24 *Finding of amount.*

And thereupon the court doth further find that, by reason of the premises, the condition of said writing-obligatory became and is broken, and an action has accrued to the plaintiff to demand and have of the defendants, Thomas F. Ryan and Charles J. Knighton, the penalty thereof; and that, by reason of the breach aforesaid, the plaintiff has sustained damages in the sum of four thousand seven hundred one dollars and forty cents, ($4,771.40,) with interest to be computed and from July 18, 1868, to wit, one thousand and ninety-four dollars and fifteen cents, ($1,094.15.)

Judgment.

It is therefore considered by the court that the United States do recover of the said defendants, Thomas F. Ryan and Charles J. Knighton, the sum of ten thousand dollars, the penalty of the writing-obligatory aforesaid, to be fully satisfied and discharged by the payment of said damages, to wit, five thousand eight hundred and sixty-five dollars and fifty-five cents, ($5,865.55,) and it is further considered that the United States do recover of said defendants, Ryan and Knighton, its costs in this behalf laid out and expended, taxed at $.

And thereupon the defendants Ryan and Knighton pray their

25 writ of error to the Supreme Court of the United States, which

is allowed upon their filing bond in the penalty of ten thousand dollars, ($10,000,) conditioned according to law, with Thomas F. Ryan and Patrick Kerland sureties thereon, who are approved by the court.

Whereupon said plaintiffs in error now file their bond, which is allowed and approved, and is in the words and figures following:

Bond in error.

Circuit court of the United States for the district of Indiana.

THOMAS F. RYAN, CHARLES J. KNIGHTON, plaintiffs in error, *v.* THE UNITED STATES, DEFENDANT IN ERROR. } Writ of error.

Know all men by these presents, that we, Thomas F. Ryan and Patrick Kerland, are held and firmly bound unto the above-named defendant in error, in the sum of ten thousand dollars, to be paid to the said defendant in error, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these
26 presents, sealed with our seals, and dated this 13th day of May, 1872.

Whereas the above-named Thomas F. Ryan and Charles J. Knighton have prosecuted their writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled suit, by the circuit court of the United States for the district of Indiana:

Now, therefore, the condition of this obligation is such that, if the above-named plaintiffs in error, Thomas F. Ryan and Charles J. Knighton, shall prosecute their said writ of error to effect, and answer all damages and costs that may be adjudged or awarded against them if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

T. F. RYAN. [SEAL.]
P. KERLAND. [SEAL.]

Sealed and delivered in presence of—
J. D. HOWLAND, *Clerk.*

Discontinued as to May.

And the said attorney for the United States now suggests of record that process herein is returned not found as to said defendant John A. May, and on his motion it is further considered that this action be and the same is hereby discontinued as to him, the said John A. May.

27 *Certificate.*

UNITED STATES OF AMERICA,
Seventh Judicial Circuit, District of Indiana, s:

I, John D. Howland, clerk of the circuit court of the United States in and for the circuit and district aforesaid, do hereby certify that the above and foregoing is a full, true, and complete transcript and copy of the record and proceedings in the above-entitled cause, and of the bond filed in error in said cause, and I do hereto annex the original writ of error, citation, and acknowle'gement service thereof.

In testimony whereof I do hereto set my hand, at the city of Indianapolis, and affix the seal of said circuit court, this 12th day of June, A. D. 1872.

[SEAL.] J. D. HOWLAND, *Clerk.*

28 *Writ of error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the seventh judicial circuit and district of Indiana, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said circuit court before you, between The United States and Thomas F. Ryan and Charles J. Knighton, a manifest error hath happened, to the great damage of the said Thomas F. Ryan and Charles J. Knighton, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings
28½ aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United State, and the seal of said circuit court.

Done at Indianapolis this 13th day of May, A. D. 1872.

[SEAL.] J. D. HOWLAND, *Clerk.*

29 *Citation.*

UNITED STATES OF AMERICA,
District of Indiana:

To the UNITED STATES:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Indiana, wherein Thomas F. Ryan and Charles J. Knighton are plaintiffs and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

May 13th, 1872.

W. Q. GRESHAM, *Judge.*

Service.

Service of this citation is hereby acknowledged.

May 13th, 1872.

THO'S M. BROWNE,
U. S. Att'y, per A.

(Indorsement on cover:) No. 237. Thomas F. Ryan and Charles J. Knighton, plaintiffs in error, vs. The United States. Indiana, C. C. W. S. Filed 9th November, 1872.

In the Supreme Court of the United States.

No. 237

THOMAS F. RYAN, ET. AL.
vs.
THE UNITED STATES.

In error to the Circuit Court for the District of Indiana.

BRIEF BY McDONALD & BUTLER FOR PLAINTIFFS IN ERROR.

In the Supreme Court of the United States.

THOMAS F. RYAN, ET. AL.
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In error to the Circuit Court for the District of Indiana.

BRIEF BY McDONALD & BUTLER FOR PLAINTIFFS IN ERROR.

At the November Term, 1870, of the Circuit Court of the United States, for the District of Indiana, suit was brought by the United States against John A. May, as principal, and Thomas F. Ryan and Charles J. Knighton, as sureties, on a transportation bond for the transportation of manufactured tobacco from the manufactory of the said May, in the Sixth Collection District of Indiana, to a bonded warehouse, Class B, in the Thirty-second District of the State of New York.

There are three counts to the declaration but they all assign substantially the same breaches to the bond. There was no service upon May, the principal, and upon a suggestion of "not found," the case, as to him, was discontinued. Oyer was craved of this bond by the sureties and it is set out in the record. They then answered by a general traverse, accompanied by the written agreement of parties that such answer should not be deemed a waiver of any objections to the legal sufficiency of any of the breaches assigned, and that all special defences might be given in evidence under the plea.

The cause was tried by the Court, a jury being waived by the parties, and a special finding of the facts was made by the Judge trying the cause, upon which he rendered judgment for the United States, for the penalty, to be satisfied by the payment of $5,865.55, the damages and interest claimed by the United States as the taxes and penalties upon the amount of plug tobacco mentioned in the bond. It is to reverse this judgment as unauthorized by the facts found by the Court that this writ of error is prosecuted.

At the time the bond in question was executed the law in force in regard to the manufacture and sale of tobacco provided "that manufactured tobacco, snuff or cigars, whether of domestic manufacture "or imported, might be transferred without payment of tax to a "bonded warehouse, established in conformity with law, and treasury "regulations, under such rules and regulations, and upon the execution of such transportation bonds or other security, as might be "prescribed by the Commissioner of Internal Revenue subject to the "approval of the Secretary of the Treasury, said bonds or other "security to be taken by the collector of the district from which "said removal was to take place." It was further provided that such tobacco, snuff, etc., might be "withdrawn from such bonded "warehouse for consumption on the payment of tax, or removed for "export without payment of tax, in conformity to the provisions of "law relating to the removal of distilled spirits," etc. Internal Revenue Act of July 13th, 1866, Sec. 9, as amended by the Act of March 2d, 1867, Sec. 9.

The Internal Revenue Act of March 31st, 1868, repealed so much of the former laws as permitted tobacco, snuff, etc., to be shipped in bond except where the same was designed for exportation, and to secure that end, exportation warehouses were established at ports of entry into which alone tobacco, etc., intended for exportation, could be shipped.

Under the acts of 1866 and 1867, above quoted, the regulations established by the Commissioner of Internal Revenue and sanctioned by the Secretary of the Treasury, relating to the transportation of tobacco, etc., from the manufactory to a bonded warehouse of the Class B, required the manufacturer to make application to the Collector of the proper district for a permit to ship in bond, and upon receiving such application it was made the duty of the Collector to detail an Inspector of tobacco, to "inspect, weigh and mark the packages," intended for shipment. It was made the duty of the Inspector "to examine each package carefully and see that the con-

tents were such as the law required," and to mark each package with the kind and quality of tobacco, the registered number of the factory and the name of the manufacturer. Forms for the appointment of such Inspector and for his inspection and return are made part of the regulations. Upon the return of the Inspector's certificate the manufacturer was required to endorse upon the copy furnished to him, a formal application to the Collector of the district for a permit to ship the articles mentioned in the certificate from his manufactory to the particular district into which it was desired to ship the same, particularly specifying the route and mode of transportation. Upon the receipt of this application it was made the duty of the Collector to take from the manufacturer a bond of the character sued on in this case, and to issue the proper shipping permit. On the arrival of the goods at their destination and upon notice to the Collector of the district to which they were so shipped, it was made his duty to detail an Inspector to inspect the same and have them duly entered in the proper bonded warehouse to which they had been consigned and to take from the consignee or owner the proper tax bond for the taxes due on the same, and to certify the facts to the Collector of the district from which the goods were shipped. That upon the receipt of such certificate the Collector of the district from which the shipment was made was required to cancel the shipping bond in the manner and form prescribed in the regulations. These regulations will be found at length in Vol. 6th of Revenue Record, pages 190–203. The particular provisions in regard to the shipment of tobacco in bond are on page 95.

It will be seen that the condition of the bond in this case is that John A. May, the principal, shall transport or cause to be transported, and within twenty days from that date shall complete the transportation of the following described merchandise, namely: 110 boxes plug tobacco, 11,928½ lbs., 40 cents tax; total, $4,771.40 —from the manufactory owned by said John A. May, at Indianapolis, directly to the Thirty-second District of the State of New York, and shall deliver the *same* to the Collector of said district and store or cause the same to be stored in a bonded warehouse, Class B, in said district, according to law, and if this shall be done then the bond is to be void. The description of the merchandise to be transported is the same as in the Inspector's return and under the regulations before cited it is required that this description should be taken from his return.

The facts as found by the Judge who tried this case disclose that

the identical 110 boxes, with their contents, just as they were when application was made to ship them and just as they were when they were inspected and branded by the Inspector, were transported to the Thirty-second District of New York and then delivered to the Inspector of that district and placed in a bonded warehouse, Class B, and that the Collector of said Thirty-second District, "duly certified to the Collector of the Sixth District of Indiana that said boxes had been so received and the usual bond (that is a bond for the taxes) had been executed therefor by the consignee, and that thereupon the Collector of the said Sixth District of Indiana had entered said bond canceled." It further appears that May, who was a regular manufacturer of tobacco in the Sixth District of Indiana, and who had of course given bond as such, had reported to the Collector of said district that he had manufactured 11,928½ lbs. of plug tobacco, the quantity said to be in the 110 boxes, and stood charged on the Collector's books with the tax upon it, but it is quite clear that this tobacoo was not shipped under this permit, as it is clearly stated in the facts found by the Judge that the "boxes contained the same material when inspected at Indianapolis and shipped from there and when the bond was executed, as they did "when they were opened at New York; that no change in the contents occurred in transit or after arrival at the bonded warehouse," consequently, as we claim, the conditions of the bond had been fully complied with, and therefore we are at a loss to see on what grounds, under these facts, a judgment could be rendered against the sureties. The principle is too well settled to require the citation of authorities to sustain it, that the liability of a surety is to be measured by his contract and that no extension of that liability can be made by the courts, and especially is he not to be made answerable for the conduct of any one, not even his principal, outside of the undertaking itself. In this case the plaintiffs in error had nothing to do with the preparation of the property in question for this was all done by May, the principal, and the officers and agents of the United States. May had reported to the Collector of the district that he had on hands 11,928½ lbs. of plug tobacco upon which the tax was unpaid, and, consequently, stood indebted to the United States on his manufacturers' bond for the taxes due on the same. This tobacco he professed a desire to ship in bond that he might eventually ship it to foreign ports, tax free, and to that end he made application for a shipping permit, an Inspector was detailed by the Collector, who professed to inspect and brand the plug tobacco, but, as it turned out, he took May's word for the

contents of these boxes and made out his certificate in which he stated that the 110 boxes contained 11,928½ lbs. of plug tobacco, when, in truth, they contained nothing of the kind, and upon executing a bond with the plaintiffs in error, as his sureties, a permit was issued to him to ship the 110 boxes inspected as containing plug tobacco when they did not, and these boxes, with their contents unchanged, were transported to the proper district and thereafter undergoing another inspection without ascertaining the true contents, they were regularly placed in the proper bonded warehouse and the shipping bond canceled. The trick played on the Government by May was wholly without the knowledge of the sureties, as is shown by the facts proved, and could only have been done through the connivance or gross negligence of the Inspector, and yet it is sought to visit its results upon the innocent sureties.

It appears that the fraud, whatever might have been the purpose of it, was discovered, and then it seems to us the officers of the Government in seeking to revive a liability on this canceled bond have mistaken the remedy, for if May did not ship the tobacco he had reported manufactured, and it is clear he did not, then he still was liable for it as tobacco on hand upon which he had failed to pay any tax and that he and his sureties on his manufacturers' bond were the parties liable for it, and not his sureties on the transportation bond, for the tobacco in fact was never covered by this bond. We insist, therefore, that the facts found do not sustain the judgment of the Court, and that therefore this cause must be reversed.

McDONALD & BUTLER,
Attorneys for Plaintiffs in Error.

APPENDIX.

LAWS AND REGULATIONS.

Acts of the 1st Session of the Thirty-ninth Congress, July 13th, 1866; page 130:

Transfer may be made to a bonded warehouse without payment of the duty.

Provided further, That manufactured tobacco, snuff, or cigars, whether of domestic manufacture or imported, may be transferred, without payment of the tax, to a bonded warehouse established in conformity with law and treasury regulations, under such rules and regulations and upon the execution of such transportation bonds or other security as may be prescribed by the Commissioner of Internal Revenue, subject to the approval of the Secretary of the Treasury, said bonds or other security to be taken by the collector of the district from which said removal is made; and may be transported from such a warehouse to any other bonded warehouse established as aforesaid, and may be withdrawn from bonded warehouse for consumption on payment of the tax, or removed for export to a foreign country without payment of tax, in conformity with the provisions of law relating to the removal of distilled spirits, all the rules, regulations and conditions of which, so far as applicable, shall apply to tobacco, snuff, or cigars in bonded warehouse. And no drawback shall in any case be allowed upon any manufactured tobacco, snuff, or cigars.

Regulations for the removal of distilled spirits to be observed in regard to the removal of tobacco, so far as applicable.

No drawback to be allowed.

Regulations, Vol. 6, Internal Revenue Record, page 95:

MODE OF TRANSPORTING GOODS IN BOND FROM PLACE OF MANUFACTURE TO A CLASS B WAREHOUSE IN ANOTHER DISTRICT.

The law* provides that mineral oil, tobacco, snuff and cigars, brandy distilled from apples, peaches, or grapes exclusively, and lucifer or friction matches, and cigar lights and wax tapers, may be transferred, without payment of the tax, directly from the place of manufacture to a general bonded warehouse in another district, under such rules and regulations and upon the execution of such transportation bonds or other security as may be prescribed by the Commissioner of Internal Revenue, subject to the approval of the Secretary of the Treasury, said bonds or other security to be taken by the collector of the district from which such removal is made.

Under this provision it is directed that such removals shall be made substantially in accordance with the preceding regulations. The party desiring to transport in bond any of the goods of the kinds above named will notify the collector of the district in which they are manufactured, in wtiting; whereupon the collector will detail the proper inspector, and will deliver to him an order in triplicate, on Form I.

Upon receiving this order the inspector will comply with the same in the manner heretofore directed concerning the inspection and marking of packages. He will then make certificates of his inspections in detail, on three copies of the collector's order (Form I,) and leaving one copy with the owner of the goods, the inspector will immediately deliver the other copies to the collector. The order and certificate on Form I will be as follows, viz:

FORM I.

OFFICE OF COLLECTOR OF INTERNAL REVENUE,

.....*District of* .....186—.

SIR: You will proceed to the [refinery or manufactory, as the case may be,] of , at , and there inspect weigh, mark, and brand, according to law and regulation, the [oil, tobacco, &c., as the case may be,] which the said desires

*See sections 61, 90 and 94 (paragraph relating to oil) of the act of June 30, 1864, as subsequently amended, and section 11, act of March 3, 1865.

to transport in bond, and you will make entries of your inspections in detail on the certificate hereto appended, and sign and deliver one copy to the owner of the goods, and the other copies to me.

(Signed) .....

Collector.

To .....

..... *Inspector* .....

....., 186—.

I hereby certify that I have this day inspected, weighed, marked, and branded, according to law and regulation, the following described merchandise, viz:

(Table same as in Form D preceding.)

produced by the [refinery, &c.,] of , at , and that the foregoing entries are true, correct, and complete.

(Signed) .....

Inspector.

The manufacturer of the goods upon receiving this certificate, will indorse upon it his application for permission to transport the goods in the following form, viz:

.....DISTRICT OF THE STATE OF.....

.....186—.

The undersigned request that the merchandise described in the within certificate of the inspector, now at the [refinery or manufactory, as the case may be,] of , at , may be transported therefrom by the mode of conveyance and routes hereinafter mentioned, to the district of the State of , at , to be upon its arrival there placed in a bonded warehouse Class B, situated in said district. The same to be conveyed by

(Signed) .....

To ..... Esq.,

Collector.

Upon the receipt of this application, the collector will exact from the applicant a bond, with good and sufficient sureties, in at least double the amount of taxes on said merchandise, in the following form, viz:

FORM FO.

KNOW ALL MEN BY THESE PRESENTS, That we, , as principals, and and , as sureties, are held and firmly bound unto the United States of America in the full and just sum of dollars; for the payment of which sum we do bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated at , this day of , A. D. 186—.

The condition of this obligation is such, that if the above-bounden , shall transport, or cause to be transported, and within days from the date hereof shall complete the transportation of the following described merchandise, viz:

(Table same as in Form F preceding.)

from the [refinery or manufactory, as the case may be,] owned by , at , directly to the district of the State of , and shall deliver the same to the collector of said district, and store, or cause the same to be stored, in a bonded warehouse Class B, in said district, according to law, then this obligation is to be void; otherwise to abide and remain in full force and virtue;

(Signed) ..... [L. S.]
..... [L. S.]
..... [L. S.]

Sealed and delivered in the presence of

.....
.....

(25 cent stamp.)

The regulations hereinafter prescribed concerning the responsibility of bondsmen must be observed by the collector, and no more time must be allowed for the transportation than is absolutely necessary.

The bond, Form FO, having been duly executed and delivered to the collector, he will deliver to the applicant a certificate endorsed on one copy of Form I, addressed to the assessor of the district as follows, viz:

OFFICE OF COLLECTOR OF INTERNAL REVENUE,

..... *District of the State of* .....186—.

I hereby certify that the within named has received permission to transport the within described merchandise to the district of the State of , he having executed and delivered to me a proper trasportation bond for that purpose.

(Signed) .....

Collector.

To ..... Esq.,

Assessor.

The presentation of this certificate to the assessor on or before the 10th of the proper month is necessary to prevent the assessment of the tax on the goods therein described.

Before the goods are shipped, the collector will require the following words to be marked, at the expense of the owner or applicant, upon each cask or package, viz:

"Bonded in the district of , for transportation to the district of ," filling the blanks with the number of the district and the name of the State.

Collectors are prohibited from giving to the owner or applicant permits to accompany the goods in cases of this kind, but the owner must ship the goods at his own risk; and upon their arrival at the place of destination, an entry of the same must be made in triplicate, with the collector of the proper district, in the following form, viz:

FORM GO.

Entry of merchandise to be stored in the bonded warehouse Class B, No. —, at , owned by , in the district, of the State of .

(Table same as in Form F, preceding.)

The said merchandise having been removed from [the refinery or manufactory] carried on by , situated in county of , and State of , being the collection district in said State, under bonds given by , and dated the day of , A. D. 186—.

(Signed) .....

Dated at ....., 186—.

The merchandise must be described in the foregoing form precisely as described in the bond Form FO.

The collector will append to one copy of this entry his order to the storekeeper of the warehouse in which the collector shall direct the goods to be stored, to receive and store the same, which order will be in the following form, viz:

OFFICE OF COLLECTOR OF INTERNAL REVENUE,

.....*District of the State of* .....186—.

SIR: You are directed to receive the above described merchandise and store the same safely in the bonded warehouse Class B, No. —, under your charge, in this district.

(Signed) .....,

Collector.

To .....,

Storekeeper.

This order, together with the goods, will be delivered by the owner or his agent, to the storekeeper, as directed.

The collector, at the time of delivering the foregoing order to the owner of the goods, or his agent, will detail the proper inspector to inspect the goods on their arrival at the warehouse, and will deliver to him the duplicate and triplicate Forms GO, with his order thereto appended. This order will be the same as that on Form O, and from this point the proceedings will be the same as those hereinafter prescribed following the order to the inspector on Form O. The collector, after having taken the warehousing bond, Form Q, will issue the certificate, Form P, omitting therefrom only the words "and consigned under bill of lading."

Goods thus transported from the place of manufacture to and stored in a bonded warehouse Class B, in the district to which consigned, can be withdrawn from such warehouse for transportation in bond, under bills of lading, to another warehouse Class B, in another district, or for exportation, in the manner hereinafter prescribed.

Collectors will in no case permit goods to be transported in bond to another district, unless they know there is at least one bonded warehouse Class B, in such district.

In the Supreme Court of the United States.

OCTOBER TERM, 1873.

THOMAS F. RYAN and C. I. KNIGHTON,
Plaintiffs in Error,
vs.
THE UNITED STATES.

No. 237.

In Error to the Circuit Court of the United States for the District of Indiana.

BRIEF FOR THE UNITED STATES.

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The question presented by the Record is: Did the bond executed by Ryan and Knighton, as sureties for May, oblige them to *cause to be transported* a certain amount of *tobacco* in certain boxes, or only certain *boxes*, irrespective of contents, *said* to contain a certain amount of tobacco?—in other words, was the tobacco the principal and the boxes a mere incident in the transportation, or *vice versa?*

The injury to the United States, participated in by all who contributed to enable May to transport the boxes, consists in this, that thereby he could, without observation, *smuggle* away the 12,000 pounds of tobacco in his factory already assessed, the tax upon which is still unpaid. By pretending to remove that amount to

New York in the boxes, he could obtain credit for it upon the lists, and then its *disappearance* would be a matter of course. The bond would then enable him to remove not only the boxes but the tobacco as well, *and the latter need not go to New York.*

In scrutinizing the items of description of the articles to be transported, (as contained in the bond,) it seems that the material one is that which sets out the *number of pounds of tobacco* which the obligors bound themselves to cause to be transported. "Marks" might be effaced, and the "number of packages" might be altered by repairs after the wreck of a train, without harm to the public, so long as the "number of pounds" of tobacco went safely. It seems, therefore, that the last is the true subject-matter of the contract, and all the rest merely incidental.

If this be so, all that need be shown, in order to prove a breach of the bond, is, that such tobacco was *not transported.* It might still be in the factory. The measure of damages would depend upon what was lost by the United States on account of such breach. In the present case, the whole tax on the 12,000 pounds appears to have been lost. This will warrant the judgment below.

GEO. H. WILLIAMS,
Attorney General.

S. F. PHILLIPS,
Solicitor General.